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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE 1998

BEFORE :

THE HON'BLE MR.JUSTICE TIRATH S.THAKUR

WRIT PETITION No.4662/1992.

BETWEEN :-

Shri.B.K. Nagaraja Setty,
since deat by his L.Rs
Sri.B.N.Sunramanya,
age:Major, residing of
Sainath Road, Arsikere,
Hassan Dist.

...Petitioner.

(By Sri.R.Padmanabhan, Adv.,)

A N D :

1. The Second Income-tax Officer,
1st Cross, Mission Hospital Road,
Northern Extension,
HASSAN.
2. The Tax Recovery Officer,
Income-tax Department,
No.4634/1, 'Chayanilaya'
Shivaji Road,
N.R.Mohalla,
MYSORE -570 007.
3. Tax Recovery Officer-III,
Unity Building Annexe,
Mission Road,
BANGALORE-560 027.
4. The Commissioner of Income-tax,
Revenue Survey Building,
BANGALORE.

...Respondents.

(By Sri.M.V.Seshachala, Adv.,)

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This writ petition filed praying to quash the Proclamation of sale issued by R-2, in No.TRO/MYS/HSN/6 to 8/85-86 vide Annexures-K; etc.,

This writ petition coming on for hearing this day, the Court made the following order :

O R D E R

The Tax Recovery Officer Mysore issued a proclamation for the sale of certain immoveable property owned by the petitioner in connection with the recovery of a sum of Rs.75,983/- due and recoverable from him as arrears of income-tax. Aggrieved the petitioner filed W.P.No.3495/1987 in which it was contended that the amount determined by the Income-tax Authorities did not give credit to certain payments allegedly made by him so that any proceedings for the sale of the property on the assumption that the arrears still remained payable was unjustified. At the hearing of the petition, the petitioner produced a letter dated 26th of March 1987 from the II Income-tax Officer, Hassan, from which it appeared that after giving deduction of certain payments made by the petitioner, a sum of Rs.56,211/- only was due and recoverable from him. This Court accordingly disposed of the writ petition filed by the petitioner reserving liberty for the authorities to issue a fresh

proclamation for the correct amount recoverable by the respondents.

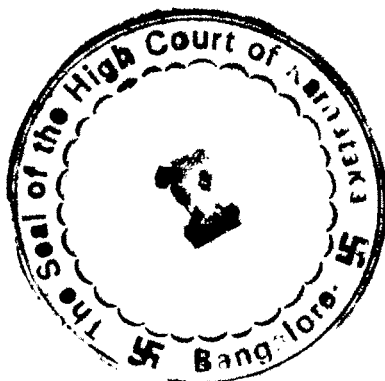
2. A fresh proclamation was thereafter issued a copy whereof has been produced as ANNEXURE-K, proposing to auction the property owned by the petitioner on 21st of February 1992, for the recovery of a sum of Rs.1,77,297/- inclusive of costs and interest recoverable from the petitioner. An auction appears to have been held on the date and the time fixed and the possession of the property in question delivered to the auction purchaser on the same date. Aggrieved by the proclamation and the consequential action taken by the Respondents, the petitioner has filed the present writ petition primarily on the ground that the liability of the petitioner had not been properly determined. I do not however see any substance in that contention. The amount of Income-tax recoverable from the petitioner as noticed earlier was a sum of Rs.56,196/- to which the Respondents have added interest recoverable under the provisions of the Act. The total liability thus comes to Rs.1,77,927/- as the principal amount of tax appears to have remained unpaid since 27th March, 1975. There is nothing before me to suggest that the determination of the amount of

tax as on the said date or the addition of interest to the same, for the period upto the date of auction suffers from any error mathematical or otherwise. In the absence of anything to support the assertion made by the petitioner, that the determination of the amount is not proper. I have no reason to hold that the amount of tax arrears determined against the petitioner have not been properly determined. If the petitioner is able to demonstrate before the authorities that the amount adjusted by them out of the sale proceeds is not actually due, he shall be entitled to the refund of the excess recorded. Till he does so the sale of the property for the recovery of whatever be the outstanding cannot be found fault with.

3. That apart the auction purchaser has not been added as a party/Respondent to these proceedings. In his absence it is difficult even otherwise to interfere with the auction which has already concluded.

4. There is no merit in this writ petition which fails and is hereby dismissed but in the circumstances without any orders as to costs.

Abid/-
Jan/-



Sd/-
JUDGE